

11.17.00.00 - HAZARDOUS WASTE AND HAZARDOUS MATERIALS

11.17.01.00 Policy

The department's policy is to consider fully all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers, and the community prior to, during, and after construction. Property Management must be aware of all potential and confirmed sites and any use of hazardous materials on future rights of way. The district must monitor these sites, terminate leases where required, and consider potential clearance of wastes when planning for right of way certification dates.

11.17.02.00 Definition

A material is hazardous if it poses a threat to human health or the environment. Hazardous materials may be any of a large group of the products listed below. (A partial list is contained in the California Code of Regulations, Title 22, Section 66261.126, Appendix X.

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radio-active

The term hazardous waste applies to the storage, deposit, contamination, etc., of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

11.17.03.00 General

The Department strives to identify, investigate, and cleanup sites at the earliest opportunity during the project development process. Occasionally these activities may not be accomplished prior to Property Management involvement.

Under a *normal* project development sequence, the entire process is completed in accordance with governmental hazardous waste requirements. Project Development is the lead unit for the identification, investigation, and cleanup process.

Right of Way assists by obtaining necessary rights to enter for testing purposes and by negotiating cleanup agreements prior to acquisition.

On projects where the normal sequence cannot be followed, Right of Way assists in identifying potential hazardous waste sites and initiates the cleanup process for all **MINOR** hazardous waste problems not requiring a Hazardous Waste Management Plan, such as underground tanks or hazardous material businesses. All investigative work is done under the administrative and technical control of the District Hazardous Waste Coordinator (HWC) with concurrence of the Department's Hazardous Waste Management Branch, Office of Project Planning and Design. If at any time a formal Hazardous Waste Management Plan is required, Project Development assumes the lead role.

11.17.04.00 Inventory

Property Management must inventory all properties under its control that have been identified as potential hazardous waste sites, including those with underground tanks. The District HWC should maintain tracking system for all district sites. Until the properties are cleared and the projects are certified for construction, Property Management must monitor all acquired properties, specifically any that have a potential for becoming hazardous waste sites.

11.17.05.00 Underground Tanks

The State Underground Storage Tank Law is contained in Chapter 6.7, Division 20, Health and Safety Code, and Underground Tank Regulations, Subchapter 16, Chapter 3, Title 23, California Administrative Code.

All underground tanks must be covered by permits issued by the local regulatory agency, and the owner of the property is responsible for obtaining the permit. Examples of such permits are "permit to store a hazardous material" and "permit to operate a hazardous material storage tank."

Underground tanks on state property should be removed as soon as possible. All inactive tanks shall be removed immediately. Active tanks shall be removed as soon as the property can be vacated. An alternative, in some cases, is to obtain a right to

enter and remove the tanks and then consider continuance of the lease.

The DD or authorized delegate must approve any exceptions to the above as current regulations for monitoring underground tanks require a substantial expenditure by the Department to comply with installation and operation of leak detection equipment. Only new tanks or those constructed since January 1984 and that meet all current requirements and regulations will be considered for possible retention or installation. The lessee is responsible for permits and all costs for monitoring the system. If a new tank is allowed, a provision for removal and cleanup by lessee at expiration of lease must be included.

11.17.06.00 **Tank Removal Procedures**

The HWC will obtain the name of the local agency official responsible for underground tanks. Since the contractor must obtain the required permits for operating or closure of all existing tanks from the local permitting agency, this information must be included in the removal contract. Also, any contract for tank removal **MUST** include provisions for barricades and cleanup.

Prior to any tank removal, Right of Way must initiate an agreement with the tenant in occupancy and the owner of the property. While Project Development and the project manager have basic responsibility for removal of all tanks, those which have no or only minor leakage can be removed under contracts initiated by Right of Way. These contracts must be approved by the HWC and must contain all the clauses approved by the Office of Service Contracts. Nonleaking tanks may have a minor deposit of product under the tank that can be cleaned up during a tank removal contract. If the leak is major, a Hazardous Waste Management Plan may be required and will be prepared under the direction of Project Development.

11.17.07.00 **Potential Surface Contamination**

Many properties have the potential for hazardous waste contamination. Examples include service stations and bulk plants, paint companies, machine shops, plating companies, light and heavy industrial manufacturing, dry cleaning establishments, fertilizer companies, junkyards, auto wrecking yards, and muffler shops. Right of Way must notify the HWC in writing when a property may contain either hazardous waste or asbestos

containing materials (ACM). Right of Way should request:

- An opinion on whether or not hazardous materials are being used.
- If they are, an assessment of the risk involved in their presence and use by the tenant, given the process used, handling methods, and equipment.
- A recommendation regarding what periodic inspections, if any, are necessary to ensure that use of any hazardous material does not result in a future hazardous waste problem.

The HWC will inspect each site and determine that:

- No testing is necessary and will make a statement that no hazardous waste is present; or
- Further investigation is necessary and proceed to hire a consultant to determine if hazardous waste actually exists; or
- There is no hazardous waste present, but hazardous materials are present and being used and what future inspections and controls, if any, may be required.

If no hazardous waste or material exists, the district should continue tenancy with amendment of lease to include the hazardous waste clause.

If hazardous waste exists and the lessee's operation is causing the waste, the district should notify the lessee to cease such action and terminate the lease. The district should initiate further steps to determine who is responsible for cleanup and when cleanup will take place. Cooperation with the HWC, Legal, and Project Development may be required. The DD or authorized delegate must approve any new lease or lease renewal for a parcel confirmed to contain a hazardous waste.

If no hazardous waste exists but hazardous materials are being used, the risk of allowing the operation to continue with possible cleanup costs and project delays must be weighed against net rent, community impact, and any positive factors. Justification for continuing the lease or rental must be documented and retained in the file.

Where there is a potential for hazardous waste and project certification date is within a three-year period, Right of Way must request the HWC to

give a priority review so that any site confirmed to have a hazardous waste will not cause a delay in clearance and subsequent R/W Certification.

Removal of improvements that contain asbestos (e.g., siding and insulation) should be coordinated with the HWC. See R/W Manual Section 12.03.07.00 for additional information.

11.17.08.00 **Lease Clause for Nonresidential Properties and Information for Tenants**

RW 11-2 contains a clause covering hazardous materials. This clause shall be included in all existing and future nonresidential leases and rental agreements except signboard sites and oil and gas leases, and where in the district's judgment hazardous waste problems are extremely unlikely. This exception may include vacant land uses, agricultural uses where chemicals such as fertilizers, herbicides and insecticides are used but not stored or mixed on the property, grazing uses, recreational uses such as parks and ball fields, and some commercial uses. The districts should take a conservative approach to these exceptions and should watch for any changes in use that could involve hazardous materials.

The hazardous waste clause should be included in revising all nonresidential leases, without waiting for renewal, for any accounts that are not excluded; i.e., properties where hazardous waste problems are extremely unlikely.

A list of hazardous materials from the California Code of Regulations, Title 22, Section 66261.126, Appendix X is extensive and useful, but it should not be considered all inclusive. Agents may obtain a copy of this list and should refer all questions relating to classification of substances to the District HWC. Each nonresidential tenant shall be provided with a copy of this list.

Additional information contained in California Health and Safety Code Sections 25286, 25294, 25295, 25298 and 25299 may also be obtained from the HWC. Tenants of properties with underground tanks shall be provided with a copy of these sections.

Use of the hazardous waste clause and the tenant's listing of hazardous materials asked to be permitted, should give the Property Manager notice of potential problems. Before any lease or rental is entered into with a new tenant, however, the Property Manager must inquire into the specific type of use proposed and consider the risk, with advice as needed.

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